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d/b/a Home Loan Mortgage Company

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL DEPOSIT INSURANCE
CORPORATION as Receiver for
AMTRUST BANK

Plaintiff,

vs.

ECOM MORTGAGE, INC. d/b/a
HOME LOAN MORTGAGE
COMPANY, a California corporation,
Defendant.

Case No. 2:15-CV-09322-SJO-SP

**STIPULATED PROTECTIVE
ORDER**

1 This Stipulated Protective Order (“Protective Order”) is submitted by the
2 Plaintiff, FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for
3 AMTRUST BANK (“FDIC-R” or “Plaintiff”), and Defendant ECOM
4 MORTGAGE, INC. d/b/a HOME LOAN MORTGAGE COMPANY (“Ecom” or
5 “Defendant”) (collectively, the “Parties”).
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7 RECITALS

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9 WHEREAS on December 4, 2009, the Office of Thrift Supervision closed
10 AmTrust Bank (“AmTrust” or the “Bank”) and appointed the FDIC as Receiver
11 pursuant to 12 U.S.C. §§ 1464(d)(2)(A) and 1821(c)(5);
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13 WHEREAS, on December 2, 2015, the FDIC-R filed an action in the United
14 States District Court for the Central District of California, Civil Action No. 2:15-
15 cv-09322-SJO-SP (the “Action”), against Defendant seeking damages (the “FDIC-
16 R Claims”); and
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18 WHEREAS, this case necessarily involves confidential bank information
19 and personally identifiable information of borrowers that are confidential and
20 generally protected from disclosure under FDIC rules and regulation (12 C.F.R. §§
21 308 and 309), the information privacy provisions of the Graham-Leach-Bliley Act
22 (15 U.S.C. §6801, *et seq.*) and/or the laws of the State of California or other federal
23 or state laws and in anticipation of producing or otherwise revealing other such
24 documents, jointly submit this Protective Order, which shall govern the production
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1 and treatment of confidential material (as defined herein) in this Action.

2 Accordingly, pursuant to Rule 26(c), Federal Rules of Civil Procedure, it is
3 hereby:
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5 ORDERED and ADJUDGED that this Protective Order shall govern the
6 production and handling of information exchanged by both the Parties and by third
7 parties in these proceedings as follows:
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9 1. **Purpose.** This Protective Order is entered for the purpose of the
10 Parties exchanging confidential documents and information in connection with this
11 litigation. This Protective Order also shall apply to and govern the production of
12 confidential documents by third parties in connection with the litigation. The
13 Protective Order is necessary because some documents produced hereunder
14 contain information protected from disclosure by law, including private and
15 protected financial information about consumers (such as protected by the Gramm-
16 Leach-Bliley Act (Pub L 106-102) and its implementing regulations) (“Non-Party
17 Borrower Information”), confidential regulatory information, proprietary work
18 product, or commercially sensitive information, disclosure of which could result in
19 violation of law, or harm to individual consumers, third parties, or the Parties.
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24 2. **Definition of Confidential Material.** For purposes of this Protective
25 Order, “Confidential Material” shall mean certain documents, records, and
26 information composed or stored in written, electronic, digital, or any other
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1 medium, provided by any Party or third party pursuant to this Protective Order, and
2 to any information identifying any names, addresses, account information, personal
3 information (such as social security number, date of birth, and any other personal
4 identification information) recognized by law as, or required to be maintained as,
5 confidential, including, without limitation, the following:
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7
8 (a) **Regulatory:** Confidential Material related in any way to
9 the regulation or supervision of the Bank and Ecom, in whatever
10 form, whether preliminary or final, including reports of examination
11 or inspection, regulatory correspondence, reports, orders, memoranda,
12 or agreements by, from or with the FDIC in its corporate capacity, or
13 any other federal or state regulatory authority, and any documents
14 containing confidential information obtained from any documents and
15 records related to the supervision or regulation of the Bank and Ecom.
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17 The Parties understand and agree that the release of such regulatory
18 information may require approval from independent government
19 agencies, and that no regulatory documents, however obtained, will be
20 disclosed to third parties not covered by this Protective Order.
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24 (b) **Statutory:** Confidential Material includes documents that
25 are confidential pursuant to the Freedom of Information Act, 5 U.S.C.
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1 §552, 12 C.F.R. Part 309, the laws of the State of California, or any
2 other applicable federal or state laws.

3 (c) ***Bank, Ecom, and Bank and Ecom Customers.***

4 Confidential Material related to the Bank, Ecom, their customers, any
5 trading company involved in placing orders for commodities futures
6 or options, or any other entity, including Automated Clearing House
7 items or transactions, chargebacks, merchant processing, bank account
8 information, signature cards, bank statements, general ledger entries,
9 deposit or reserve information, commodity trading statements, loans
10 and lending transactions, loan applications, financial statements and
11 credit reports, business and personal state and federal income tax
12 forms, correspondence, and related loan documentation relating to any
13 extension of credit or loan to any borrower. Examples of
14 “Confidential Material,” without limitation, include documents
15 containing a customer’s account number, credit card number, personal
16 identification number, account balance, information relating to a
17 deposit account, loan, or borrower relationship and loan application
18 materials, and documents or information that contain the customer’s
19 name, address, social security number, date of birth or other similar
20 identifying information.
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1 (d) **Receivership.** Confidential Material related to the
2 receivership of the Bank, including any information on loss or
3 estimates of such loss on the Bank's assets not publicly available.
4 Notwithstanding the provisions of paragraph 6(a) - (j), no such
5 Confidential Material shall be disclosed to any person or entity known
6 to have any current or prospective interest in such assets, whether or
7 not that person or entity would otherwise be allowed access to
8 documents and information under the terms of this Protective Order.
9 This subparagraph (d), however, does not prevent such documents
10 from being shared with experts or others listed in paragraphs 6(a) - (i).
11

12 (e) **Third Parties.** Confidential Material produced by
13 independent contractors, outside accountants or auditors, or other
14 entities or individuals who performed work for the Bank or Ecom.
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16 Notwithstanding the foregoing paragraphs (a) - (e), no Party is estopped or in any
17 way prevented from later challenging the confidentiality designation of any
18 document.
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20 3. ***Confidential Designation and Treatment of Confidential Material.***
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22 Documents provided by any Party or third party pursuant to this Protective Order
23 that are deemed and denominated by any Party or producing third party as
24 "Confidential" pursuant to this Protective Order shall be deemed to be Confidential
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1 Material, unless and until that designation is challenged pursuant to paragraph 4,
2 below. Confidential Material may be designated as such by affixing to the material
3 the legend "Confidential." The failure to designate any documents with such
4 legend shall not constitute a waiver by any Party or producing third party of the
5 right to assert that such documents contain protected Confidential Material. In the
6 event that any Party or third party produces Confidential Material without
7 designating it as such, the producing Party or third party may notify the receiving
8 Parties that the documents or information should have been designated
9 Confidential Material, and the Parties will treat the documents as Confidential
10 Material under this Protective Order. Confidential Material shall only mean and
11 shall be limited to the documents produced in this Action marked with a Bates
12 Stamp number. In the event a Party obtains a duplicate copy of a document
13 produced in discovery in this litigation from a publicly available source, the Party
14 acquiring the document shall not be required to comply with the terms of this
15 Order regarding the use of the duplicate document, and the use of such duplicate
16 document shall not be subject to the provisions of the Order.

22 4. *Challenge of Confidentiality Designation.* A Party shall not be
23 obligated to challenge the propriety of a designation of confidentiality at the time
24 made, and a failure to do so shall not preclude a subsequent challenge thereto. In
25 the event that any Party disagrees at any stage of these proceedings with the
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1 confidentiality designation by the producing Party or third party, the Parties shall
2 first try to dispose of such dispute in good faith on an informal basis. If after
3 fifteen (15) days the dispute cannot be resolved, the Party objecting to the
4 designation may, at any time thereafter, seek appropriate relief from the Court in
5 which this Action is pending. The challenged designation shall be maintained and
6 shall remain in full force and effect pending the Court's determination on the
7 challenged designation.
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10 5. *Non-disclosure of Confidential Material.* All Confidential Material
11 provided pursuant to this Protective Order is provided solely and exclusively for
12 purposes of litigating this Action. Absent further written agreement between the
13 Parties or further court order, all such materials shall be maintained confidential
14 pursuant to this Protective Order and shall not be disclosed, discussed, or in any
15 way divulged to any person for any other purpose, except as permitted under this
16 Protective Order.
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19 6. *Exceptions to Non-disclosure.* The Parties agree that the Confidential
20 Material shall be used only to investigate, analyze, litigate, and resolve this Action.
21 The Parties may disclose Confidential Material received pursuant to this Protective
22 Order to the following persons or entities, provided that each person or entity,
23 required to do so, complies with paragraph 7 below:
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1 (a) counsel signing this Protective Order (together with any
2 employees of counsel) engaged by any Party to assist or participate in
3 the evaluation and resolution of the FDIC-R Claims;
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5 (b) vendors, consulting experts, testifying experts and
6 consultants engaged by any Party to assist or participate in the
7 investigation, analysis and defense of the FDIC-R Claims;
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9 (c) any potential insurer and potential insurer's counsel. A
10 potential insurer may disclose Confidential Material to any of the
11 insurer's reinsurers, regulators, auditors, or other entities to whom the
12 insurer may be required to respond or report to in the ordinary course
13 of business regarding the subject matter of the FDIC-R Claims, each
14 of which are exempt from the requirements of paragraph 7 but only so
15 long as such persons or entities are already subject to confidentiality
16 obligations that are substantially similar to those set forth in this
17 Order;
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21 (d) the individual Defendant in this Action;

22 (e) other Bank officers, directors, employees, independent
23 contractors, or outside accountants or auditors who performed work
24 for the Bank;
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1 (f) FDIC (in any of its capacities) personnel, including, but
2 not limited to, its Chairman, Board of Directors, attorneys,
3 investigators, senior executives, and others) conducting, assisting,
4 monitoring, reviewing, or making determinations with regard or
5 related to the FDIC-R Claims, or the Action;
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7 (g) any witness or third party contacted by counsel for a
8 party to investigate this case, whether such witness or third party will
9 or will not testify at trial or in deposition, in this Action, provided,
10 however, that no disclosure of Confidential Material to such persons
11 shall be made unless and until the witness or third party has executed
12 the agreement to maintain confidentiality;
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14 (h) Court officials involved in this Action including court
15 reporters, certified translators or interpreters, and other Court
16 personnel as are necessarily incident to the conduct of discovery, the
17 preparation for the trial or the trial itself; and
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19 (i) officers, employees, representatives, and agents of the
20 Party that produced the Confidential Material may see any and all
21 Confidential Material produced by that Party.
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23 In no event shall any Confidential Material be disclosed to any party, by consent or
24 by identification in the foregoing list, without such person first having executed the
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1 appropriate acknowledgments and agreements required herein. Notwithstanding
2 this paragraph 6, Material that is Confidential pursuant to paragraph 2(d) shall not
3 be disclosed to any person or entity known by Defendant to have any interest in
4 Bank assets, whether or not that person or entity would otherwise be allowed
5 access to documents and information under the terms of this Protective Order,
6 without seeking and obtaining the permission of the Court in this Action.
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9 7. ***Protective Order Certificate.*** Confidential Material may only be
10 disclosed to persons or entities identified in subparagraphs 6(a) - (i). Persons or
11 entities identified in subparagraphs 6(c) (with counsel signing for any potential
12 insurer and counsel's own law firm), 6(b), (d), (e), and (g) must sign a written
13 Agreement to Maintain Confidentiality, in the form attached as Attachment A.
14 The Parties shall keep all of their respective Agreements to Maintain
15 Confidentiality containing original signatures.
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18 8. ***Demands by Others for Confidential Materials.*** If any other person
19 or entity demands, by subpoena or other judicial process, or by operation of law
20 production of documents produced and marked as Confidential pursuant to this
21 Protective Order, the Party receiving such demand shall promptly notify the
22 producing Party or third party of such demand. At its option, the producing Party
23 or third party may elect to challenge the demand and assert any applicable
24 protections. The objecting Party or third party shall notify the other Parties hereto
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1 and issuing court or tribunal of its challenge as required by law, the subpoena, or
2 other judicial process. The burden of proving that Confidential Material is entitled
3 to protection from disclosure shall be with the Party or third party making the
4 claim. When such a challenge is made, the Party who received the demand shall
5 not produce any Confidential Material in the absence of consent by the producing
6 Party or third party or an order by the issuing court or tribunal compelling
7 production.
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10 9. *No Waiver of Objections to Use; Filing Under Seal.* The Parties
11 hereto shall not contend or assert that a Party's production of Confidential Material
12 pursuant to this Protective Order in any way acts as a waiver of any privilege, work
13 product doctrine, or discovery or evidentiary objections by the producing Party, or
14 otherwise entitles the receiving Party to obtain or use Confidential Material in a
15 manner contrary to this Protective Order. In the event any party, who has
16 designated a document (the "Designating Party") as Confidential Material pursuant
17 to this Order, wishes to file under seal the Confidential Material, the Designating
18 Party shall first consult with the Non-Designating Party to determine whether
19 agreement may be reached on an informal basis. After consulting with the Non-
20 Designating Party, the Designating Party shall file a motion with the Court
21 demonstrating good cause for the sealing with a request that the Confidential
22 Material be filed under seal pursuant to Court rules and remain under seal until
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1 such time as the Court orders otherwise. The Court will then determine whether
2 the document should be filed under seal and enter an appropriate order. In the
3 event a Non-Designating Party wants to include in a court filing Confidential
4 Material, which will not be the subject of a motion by the Non-Designating Party
5 seeking the Court's permission to file the document under seal, the Non-
6 Designating Party must give the Designating Party at least three days advance
7 notice to allow the Designating Party to file its own motion seeking a Court
8 determination of whether the document should be filed under seal. The Non-
9 Designating Party must not file the Confidential Material with the Court until the
10 Court has ruled upon the Designating Party's motion to file under seal. In the
11 event the Designating Party fails to file a motion to seal within three days after
12 notification by the Non-Designating Party of its intent to file Confidential Material,
13 the Non-Designating Party shall not then be required to file the Confidential
14 Material under seal. Any Confidential Material filed under seal shall remain under
15 seal until such time as the Court orders otherwise.

21 10. ***Reservation of Rights.*** Nothing in this Protective Order confers upon
22 the Parties any further right or access to documents or information not provided by
23 the other Parties, including but not limited to any documents a Party or third party
24 withholds on the basis of any applicable privilege or immunity, regardless of
25 whether such withheld document(s) may otherwise qualify as Confidential
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1 Material if produced rather than withheld. With respect to Confidential Material
2 produced, each Party reserves its rights under this Protective Order, and otherwise
3 under law. Any documents withheld on this basis or any other basis must be
4 identified on a privilege log to be provided by the Party or third party asserting the
5 privilege or other protection within two weeks of the date the document(s) would
6 have been produced had it not been privileged or otherwise protected from
7 disclosure.
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10 11. ***Return of Documents.*** Within ninety (90) days after final
11 adjudication of this Action, including any resolution through settlement, unless
12 otherwise agreed to in writing by Counsel for all Parties, the Parties shall either
13 (a) assemble and return all Confidential Materials, including all copies thereof, to
14 the producing Party or third party, or (b) certify in writing that all such
15 information has been destroyed. The persons and entities identified in
16 subparagraphs 6(a)-(c) and (g) may retain copies of any Confidential Material
17 produced to them as reasonably necessary to comply with future requests for
18 review by reinsurers, auditors, regulators, or as necessary to exercise or enforce
19 any subrogation rights, or as necessary to meet other business requirements.
20 When such retention is no longer needed, such persons and entities shall return to
21 the producing party the retained documents or destroy those documents in
22 accordance with their standard document or data destruction procedures, subject to
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1 any applicable litigation hold or any other document or information hold imposed
2 by any governmental body or court order. Any person or entity retaining such
3 Confidential Material shall maintain its confidentiality in accordance with this
4 Protective Order until such documents are returned or destroyed. The Parties'
5 counsel are also permitted to retain copies of Confidential Material provided to
6 them in the course of their representation of the Parties. This paragraph does not
7 apply to any documents or information ordered produced by a court without the
8 limitations set forth in this Protective Order, or to work product generated by
9 counsel. The Parties further agree that all documents generated by them that
10 summarize or otherwise include Confidential Material are governed by all other
11 sections and subsections of this Order. To the extent any Party retains any
12 Confidential Material pursuant to a separate written agreement, the terms of this
13 Protective Order will continue to govern.

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18 12. **Remedies.** To enforce rights under this Protective Order or in the
19 event of an alleged violation of this Protective Order, the Parties and/or any
20 producing third party shall first seek to resolve the alleged violation through
21 prompt and reasonable discussion. In the event such efforts fail to promptly
22 resolve the alleged violation, the Parties and/or any producing third party reserve
23 the right to seek relief from the Court in the action for, inter alia, money damages,
24 injunctive relief, or any other relief as appropriate.
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1 13. *No Waiver of Privileges.* Pursuant to Federal Rule of Evidence
2 502(d), the production of information that is subject to the attorney-client privilege,
3 work product doctrine, or other claimed privileges, doctrines, exemptions, or
4 restrictions that the producing party might cite in good faith as a basis for
5 withholding such information from production to any other party shall not be
6 deemed, and shall not constitute, in this or any other federal or state proceeding, a
7 waiver of any otherwise applicable privilege or protection. The Parties shall not
8 have to meet the requirements of Fed. R. Evid. 502(b)(1)-(3). With respect to the
9 FDIC, in any of its capacities, these privileges include, but are not limited to, any
10 privilege that the Bank may have had or any federal or state regulatory agency may
11 hold. The Parties' production of Confidential Material is not intended to, and shall
12 not, waive or diminish in any way the confidentiality of such material or its
13 continued protection under the attorney-client privilege, work product doctrine, or
14 any applicable privilege as to any other third party.
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16 Furthermore, in the event that a Party or third party produces attorney-client
17 privileged or otherwise privileged documents or information, or other documents
18 protected by law from disclosure even under a Protective Order, and if the Party or
19 third party subsequently notifies the receiving Party that the privileged documents
20 or information should not have been produced, the receiving Party shall
21 immediately return the originals and all copies of the inadvertently produced
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1 privileged documents and information. Nothing in this Protective Order shall
2 prevent the FDIC from using any Confidential Material that it produces to the
3 Defendant in any of its capacities for any lawful purposes.
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5 **14. Disclosure of Non-Party Borrower Information.** To the extent any
6 federal or state law or other legal authority governing the disclosure or use of Non-
7 Party Borrower Information (“Non-Party Borrower Information Law”) permits
8 disclosure of such information pursuant to an order of a court, this Protective Order
9 shall constitute compliance with such requirement. To the extent any Non-Party
10 Borrower Information Law requires a producing party to obtain a court-ordered
11 subpoena or give notice to or obtain consent, in any form or manner, from any
12 person or entity before disclosure of any Non-Party Borrower Information, the
13 Court finds that, in view of the protections provided for the information disclosed
14 in this Protective Order, the volume of documents to be produced and the ongoing
15 oversight of the Court, there is good cause to excuse such requirement, and this
16 Protective Order shall constitute an express direction that the producing party is
17 exempted from obtaining a court-ordered subpoena or having to notify and/or
18 obtain consent from any person or entity prior to the disclosure of Non-Party
19 Borrower Information in the Action. To the extent that any Non-Party Borrower
20 Information Law requires that any person or entity be notified prior to disclosure of
21 Non-Party Borrower Information except where such notice is prohibited by court
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1 order, the Court directs that, in view of the protections provided for the information
 2 disclosed in this Protective Order, the volume of documents to be produced and the
 3 ongoing oversight of the Court, producing parties are explicitly prohibited from
 4 providing such notice in the Action; provided, however, that this Protective Order
 5 shall not prohibit any producing party from contacting any person or entity for any
 6 other purpose. Any producing party may seek additional orders from this Court
 7 that such party believes may be necessary to comply with any Non-Party Borrower
 8 Information Law.

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 12 15. ***Binding Effect; Assignment.*** The Protective Order shall be binding
 13 upon and inure to the benefit of the Parties hereto, their affiliates, their
 14 representatives, and the Parties' respective successors or assigns. No Party may
 15 assign any right or delegate any duty under this Protective Order other than to an
 16 affiliate without the other Party's prior written consent.

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 19 16. ***Notice.*** All notices required to be given under the Protective Order
 20 shall be in writing and delivered to the addressees set forth below. Notice shall be
 21 sent by overnight delivery or registered or certified mail, return receipt requested,
 22 and shall be considered delivered and effective three days after mailing.

23
 24 If to FDIC-R: Emilia P. E. Morris
 25 MORTGAGE RECOVERY LAW GROUP LLP
 26 700 N. Brand Blvd., Suite 830
 27 Glendale, CA 91203
 28 *Counsel for Plaintiff FDIC as Receiver for AmTrust Bank*

If to Defendant: Michael I. Kim
CKB VIENNA, LLP
10390 Commerce Center Drive, Suite C-110
Rancho Cucamonga, CA 91730
*Counsel for Defendant Ecom Mortgage, Inc. d/b/a
Home Loan Mortgage Company*

So Stipulated:

February 12, 2016 /s/ Emilia P E. Morris
Emilia P. E. Morris
MORTGAGE RECOVERY LAW GROUP LLP
*Counsel for Plaintiff FDIC as Receiver for
AmTrust Bank*

February 12, 2016 /s/ Michael I. Kim
Michael I. Kim
CKB VIENNA, LLP
*Counsel for Defendant Ecom Mortgage, Inc. d/b/a
Home Loan Mortgage Company*

APPROVED AND SO ORDERED this 12th day of February, 2016.



Sheri Pym
United States Magistrate Judge

ATTACHMENT A
AGREEMENT TO MAINTAIN
CONFIDENTIALITY

I hereby acknowledge that I have been provided and have read a copy of the Stipulated Protective Order, (the "Protective Order"), a copy of which is annexed hereto. I understand that any Confidential Material within the meaning of the Protective Order shown to me is confidential, shall be used by me only as provided in the Protective Order, and shall not be disclosed by me unless expressly permitted under the Protective Order. I agree to abide by the terms of the Protective Order. I will return any such Confidential Material provided to me and will not retain any copies of Confidential Material, including any notes or other documents generated that include any content from the Confidential Material, pursuant to the terms of the Protective Order.

Name: _____
 (signature)

Date: _____

Name: _____
 (printed)

Telephone: _____
 (Business)

Company: _____

 (Home)

 (Cell)

Address: _____

City: _____

State/Zip Code: _____